(4)

C.f.for

(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No.2763/2004

PETITIONER

Sudarshan Dhruw
Aged about 28 years,
S/O Late Shri M.L. Dhruw
Constable No. 168 R/O
Rudri Dhamtari, District
Dhamtari (Chhattisgarh)

R. R. No. 27/01/04
Presented by Shri Manish Upadhyay
Dated 21-5-04

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary
Department of Home
D.K.S. Bhawan,
Mantralaya Raipur
(Chhattisgarh)

2. Superintendent of Police
District Dhamtari
(Chhattisgarh)

3. Superintendent of Police
District Bastar
(Chhattisgarh)

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21/5/04
Clerk to A. G. Bilaspur

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS TO MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:-

1. **PARTICULARS OF THE PETITIONERS:**

As stated above in the cause title.

2. **PARTICULARS OF THE RESPONDENTS:**

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No.2763 of 2004

Sudarshan Dhruw

Vs.

State of Chhattisgarh and others

ORDER

Post for 1 .04.2005

Sd/-
Sunil Kumar Sinha
Judge

(57)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No.2763 of 2004

Sudarshan Dhruw

Vs.

State of Chhattisgarh and others

Appearance:

Shri Jitendra Pali, learned counsel for the petitioner

Shri U.N.S. Deo, Govt. Advocate for the State

O R D E R

(01.04.2005)

Sunil Kumar Sinha, J

The petitioner who is a Police Constable has challenged the validity of his transfer order dated 02.8.2004 (Annexure P-4) whereby he has been transferred from District Dhamtari to District Bastar. The case of the petitioner is that he was appointed as a Constable vide order dated 22.5.1999. He was posted in District Dhamtari (C.G). He completed his training on 21.12.2000. The order of transfer has been challenged on the ground that the same has been issued in violation of the transfer policy dated 22.2.2001 (Annexure P-5). The submission of learned counsel for the petitioner is that according to Clause 1(b) of the aforesaid policy, the petitioner would not have been transferred from Dhamtari to Bastar unless he completes a period of 5 years in the said district from the date of completion of his training. Since the training was

completed on 21.12.2000, therefore, the order of transfer issued on 02.8.2004 violates the policy framed by the department. Referring to another policy (Annexure P-6) issued by the State Government, learned counsel submits that no transfer of a Government Servant can be effected in the current session after 31.07.2004.

(2) The State has filed its return taking the ground that the transfer is an incidence of service and the transfer order of the petitioner has been issued on administrative exigencies. It is submitted by the State that normally the transfers should not be interfered by the Court unless it is proved to be mala-fide or arbitrary or with some ulterior motive. It has been stated vide Para 7 of the return that the petitioner was not transferred on the basis of any complaint, but was transferred purely on administrative grounds.

(3) Rejoinder to the return has also been filed by the petitioner. In addition to the above, another contention has been raised vide Para 3 of the rejoinder that in fact, the transfer order was issued on political pressure for pleasing the executive bosses. A document (Annexure P-7) has also been filed with rejoinder to show that the transfer was effected on account of certain complaints and the stand of the Government that the same was on administrative exigency is incorrect. Except the above grounds no other grounds have been raised by the petitioner.

(4) I have heard learned counsel at length and have also perused the records of the case.

(5) The first submission of learned counsel for the petitioner is that when the policy of the department itself shows that a constable posted at one place can be transferred only after completion of 5 years of service after the training, then an order prior to completion of this period is in violation of the policy and the same should be struck down. He also refers to another policy of the State filed as Annexure P-6. Learned counsel relies on the decision rendered in the matter of ***Secretary, Ministry of Chemicals & Fertilizers, Government of India -vs- Cipla Ltd. And others reported in (2003) 7 SCC Pg.1***. Referring to this decision, he submits that the State cannot violate its own policy and if the policies so framed by the State are violated, the Court must interfere in it and should set aside the order passed against the policy.

(6) After perusal of the judgment, it transpires that the said matter relates to Drug Policy 1994 pertaining to selection of "Drugs for Price Control". The matter came up before the apex Court for consideration after the High Court held that the Drugs concerned should not have been brought within the purview of the "Drugs (Price Control) Order 1995 (for short "DPCO 1995") and consequently, there could be no fixation of price in relation to those drugs and the notices demanding over-charged amounts were quashed allowing the writ petitions

filed. Para 4.1 of the aforesaid decision is important and quoted below:

> *"It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of clauses contained in policy formulations. At the same time, the Central Government which combines the dual role of policy maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the policy guidelines evolved by itself in the matter of selection of drugs for price control. The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore came forward with specific criteria. It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance. That being the case, the Government exercising its delegated legislative power should make a real and earnest attempt to apply the criteria laid down by itself. The delegated legislation that follows the policy formulation should be broadly and substantially in conformity with that policy, otherwise it would be vulnerable to attack on the ground of arbitrariness resulting in violation of Article 14."*

After perusal of this paragraph, it transpires that the view has been expressed in relation to the policy guidelines evolved by the Central Government in the matter of selection of "Drugs for Price Control". This certainly means that the precedent is not in relation to general policy issued by the Government or the State authority in usual manner. A ratio of judgment specifically rendered regarding policy in a particular matter, as in this case about selection of "Drugs for Price Control", cannot be made applicable in relation to other policies like the policy of transfer as in the present case issued by the State. The case is distinguishable on this point. The words used and principles laid down by the Apex Court in Para 4.1 are very much

particular which are with reference to the selection of Drugs for Price Control. The arguments advanced that the order passed in violation of the transfer policy should be struck down on the principles laid down about the 'drugs policy' of the Central Government cannot be accepted.

(7) Now coming to the next point about the nature and import of the policies in question, in fact, these policies are nothing but the guidelines issued by the State or the department. It has been held in the matter of ***Union of India – Vs – S.L.Abbas reported in AIR 1993 SC 2444*** that the guidelines issued by the Government about the transfer of a Government employee do not confer upon the Government employee a legally enforceable right. It has further been held vide para 7 of the aforesaid judgment that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. It has been further held that while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.

(8) In the series of judgments the Apex Court has held that the transfer is an incidence of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed

norms of principles governing the transfer. Referring to the decisions reported in ***1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray -Vs- State of Orissa)*** and ***S.L. Abbas' case*** referred to above, the apex Court laid down this law in the matter of ***Kendriya Vidyalaya Sangathan -Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563.*** In this judgment itself, the apex Court in latter part of Para 4 mentioned the observations rendered in the matter of ***Union of India and others -Vs- Janardan Debanath and another (2004) 4 SCC 245*** that :

> *"No government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/ management, as against such orders passed in the interest of administrative exigencies of the service concerned".*

The apex Court further referred to the decision reported in the matter of ***National Hydroelectric Power Corpn. Ltd., - Vs- Shri Bhagwan, (2001) 8 SCC 574***.

(9) The above series of judgments pronounced by the apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer

passed by the competent authority. If the jurisdiction and the authority is not challenged nor there is any challenge on the ground of violation of any statutory rules then unless the malafide, arbitrariness or extraneous considerations are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be purely on administrative exigency will not be accepted to be a normal transfer.

(10) In the present case, in fact, the petitioner has been failed to definitely plead and substantiate about malafides or the arbitrariness on the part of the respondents. He has also been failed to establish any instance of extraneous consideration or political motivation. The petitioner has tried to base upon Annexure P-7 saying that his transfer was due to some complaint is also not acceptable as the second part of the said document itself goes to show that the complaint filed against the petitioner by one of his neighbour was found to be exaggerated, based on suspicion. In such situation, in the absence of above factors, the contention of the respondents regarding transfer on administrative ground is to be upheld. The petitioner cannot succeed in the petition only on the ground that some condition of the transfer policy has been violated in his transfer. These transfer policies are nothing but the guidelines and as far as possible, they are to be followed by the State, but it cannot be said that it shall bind the State and in the event of exigency, the authorities of the State will not be

able to effect the orders of transfer against the said guidelines. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. The petition has no merit and the same is dismissed without any order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/